

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID LEE WALTON,

Defendant-Appellant.

UNPUBLISHED

August 16, 2005

No. 254820

Calhoun Circuit Court

LC No. 2003-000406-FC

Before: Cooper, P.J. and Bandstra and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial conviction of second-degree murder, MCL 750.317, for causing the death of his six-year-old daughter by submerging her in a bathtub filled with cold water. The trial court sentenced defendant to life in prison. We affirm.

Defendant's only issue on appeal is that there was insufficient evidence that he acted with malice. We review "the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

The elements of second-degree murder are "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999). Malice is "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *People v Aldrich*, 246 Mich App 101, 123; 631 NW2d 67 (2001). It need not be shown that defendant had an actual intent to harm or kill, "but only the intent to do an act that is in obvious disregard of life-endangering consequences." *Id.*, quoting *Mayhew*, *supra* at 125.

Defendant first contends that there was no testimony that he had held the victim down in the bathtub. However, the record reveals that two police officers testified at trial that defendant admitted to having held the victim down in the water with the assistance of Bonnie VanDam.

Defendant also contends that there was insufficient evidence that he acted in disregard of life-endangering consequences of his actions when previous similar cold-water baths produced no obviously dangerous results. We disagree. Defendant had frequently punished the victim by

forcing her take cold baths. There was also testimony that on at least two occasions, defendant held the victim down in the bathtub, submerging her head in the water until she stopped struggling or blacked out. The fact that these prior occasions never resulted in death or injury apparent to defendant does not obviate a finding of defendant's disregard for the life-endangering consequences of his actions. Our review of the record reveals that there was sufficient evidence for a rational trier of fact to find that defendant acted with malice.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly